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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/405,504 09/23/99 STAHL

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HAMILTON BROOK SMITH AND REYNOLDS, P.C.  
TWO MILITIA DR  
LEXINGTON MA 02421-4799

EXAMINER

WEGERT, S

ART UNIT

PAPER NUMBER

1647

DATE MAILED:

15  
10/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/405,504

Applicant(s)

STAHL ET AL.

Examiner

Sandra Wegert

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 73,74 and 82-123 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 73,74 and 82-123 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

**Office Action**

**Restriction Requirement:**

Applicants election of Invention III, now represented by claims 73, 74 and 82-123 in paper number 14 filed 6/28/01, is acknowledged. The election has been treated as an election without traverse (MPEP § 818.03(a)), based on an incomplete response.

Applicants newly filed claims are drawn to numerous patentably distinct nucleic acid sequences. Thus, further restriction *within* the formerly presented Invention III is required, as follows:

The claims are drawn to numerous patentably distinct nucleic acids, each of which constitutes a patentably distinct product. Applicant is required to elect a single invention of nucleic acid(s), selected from the following groups (a) - (k):

- a) SEQ ID NO: 49, 53 and 57
- b) SEQ ID NO: 25,
- c) SEQ ID NO: 102,
- d) SEQ ID NO: 55,
- e) SEQ ID NO: 24,
- f) SEQ ID NO: 46,
- g) SEQ ID NO: 101,
- h) SEQ ID NO: 54,
- i) SEQ ID NO: 25,
- j) SEQ ID NO: 27, or
- k) SEQ ID NO: 49.

Although the classifications for these various nucleic acids are overlapping, for instance 530/300+, each represents a patentably distinct product with distinct physical and functional characteristics.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(i).


**Advisory Information:**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Wegert whose telephone number is (703) 308-9346. The examiner can normally be reached Monday - Friday from 8:30 AM to 5:00 PM (Eastern Time). If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Gary Kunz, can be reached at (703) 308-4623.

Official papers filed by fax should be directed to (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

SLW

9/21/01



ELIZABETH KEMMERER  
PRIMARY EXAMINER